

WEBINAR WEDNESDAYS



Wednesday, July 14, 2021

Beyond the Courtroom Doors: Working with Victims Post-Conviction in Appellate Cases

Presented by:

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&

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Distributed by:

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EXECUTIVE DIRECTOR

ADVOCATING AFTER TRIAL

ASSISTING VICTIMS IN POST-CONVICTION APPEALS



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Law & Order, Wolf Films, NBC Universal

SESSION OBJECTIVES

- Discuss how trial prosecutors & advocates can prepare victims for the appellate process
- Review victims' rights at the appellate stage
- Explore advocacy in appeals
 - Direct appeals
 - PCRs / Rule 32
 - Federal appeals
 - Capital / death penalty appeals

What about...?

How do I...?

What if...



PREPARING VICTIMS

When do you bring up appropriate victims?

During Trial

During Pre
Pre

Following
Sentencing

ALL THREE



POST-CONVICTION NOTIFICATION REQUEST FORM

SENTENCING RESULT: JAIL AND/OR PROBATION

As a victim of crime, you have the right, upon request, to receive post-conviction notice. Please see the next page for more detailed information. To request notice, copies should be distributed to the agencies indicated below.

IF YOU DO NOT WISH TO RECEIVE POST-CONVICTION NOTIFICATION, YOU DO NOT NEED TO COMPLETE OR RETURN THIS FORM.

INSTRUCTIONS

- Multiple agencies are responsible for providing post-conviction notice. To request notice, you or the victim's lawful representative, if applicable, should complete and return a copy of the completed form to each agency.
- NOTE: A separate form should be completed and returned for each agency. Do not list multiple victim representatives, if applicable. Do not list multiple victim addresses.
- Mail or return a copy of the completed form to each agency.
- Keep Pages 1 and 2, along with a copy of Page 3, for your records.
- Maintain your current contact information with EACH office. If you change your address, it is your responsibility to keep it updated. FAILURE TO DO SO MEANS THAT YOU WAIVE YOUR RIGHT TO NOTICE.
- If the court has ordered that the defendant pay you restitution, you must also keep your name, address and phone number current with the Clerk of the Superior Court in the county in which restitution was ordered.

Coconino County Attorney's Office

Victim Notification Secretary
110 E. Cherry Ave.
Flagstaff, AZ 86001
Phone: (928) 679-8200 Fax: (928) 679-8201

Arizona Department Of Corrections, Rehabilitation & Reentry

Attn: Victim Services
1601 W. Jefferson (MC250)
Phoenix, AZ 85007
(602) 542-1853 or (866) 787-7233

Coconino County Adult Probation

Victim Notification Unit
110 E. Cherry Ave
Flagstaff, AZ 86001
(928) 679-8400 or
mhart@coconino.az.gov

Arizona Attorney General's Office

Office of Victim Services
2005 N. Central Ave.
Phoenix, AZ 85004
(602) 542-4911 or (866) 742-4911
agovs-pcnr@azag.gov

Arizona Board Of Executive Clemency

1645 W. Jefferson, Suite 101
Phoenix, AZ 85007
(602) 542-5666

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PCNR Prison
Revised: May 2020

Pima County Attorney's Office

Felony Records - Victim Notification
32 N. Stone Ave.
Tucson, AZ 85701
(520) 724-5600

Pima County Adult Probation

Victim Notification Clerk
150 W. Congress, 1st Floor
Tucson, AZ 85701
(520) 724-3800

Pima County Sheriff's Office

Jail Records
1270 W. Silverlake
Tucson, AZ 85713
(520) 351-8200 or jailrec@sheriff.pima.gov

Arizona Attorney General's Office

Office of Victim Services
400 W. Congress, S-Bldg., Suite 315
Tucson, AZ 85701
(520) 628-6504 or (866) 742-4911
agovs-pcnr@azag.gov

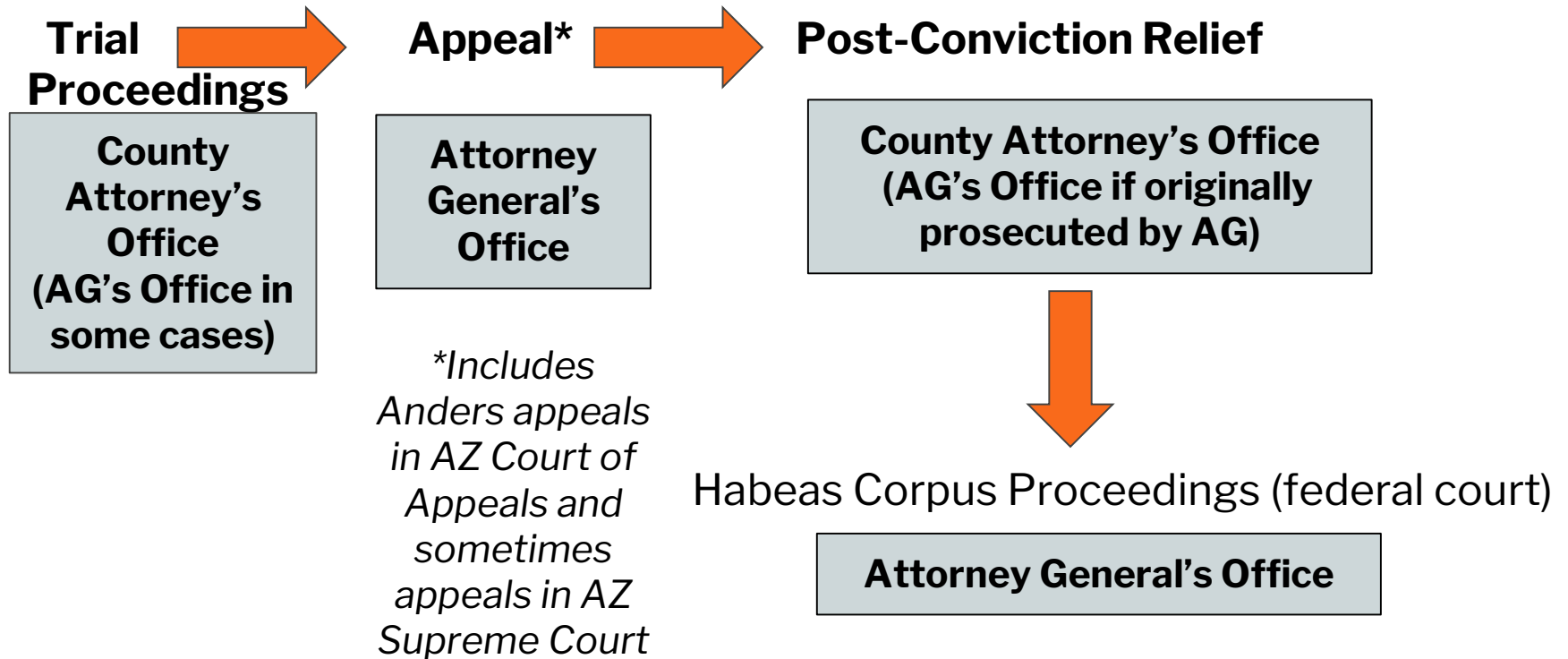
PCNR Jail/Probation Form
Revised: May 2020

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ATTORNEY GENERAL - PIMA



Prosecutorial Agencies Responsible for State Court Convictions in Arizona



VICTIMS' RIGHTS AND APPEALS

Victims' Bill of Rights, Arizona Constitution, Article 2,
Section 2.1

A.R.S. § 13-4411 – Notice of post-conviction review and
appellate proceedings

A.R.S. § 13-106 – Death of convicted defendant; dismissal
of appellate and post-conviction proceedings

A.R.S. § 13-4042 – Appellate proceedings; request for
extension; victim notification

A.R.S. § 13-4234.01 – Post-conviction relief proceedings;
request for extension; victim notification



APPEALS & VICTIM PRIVACY

Rule 31.10(f), Arizona Rules of Criminal Procedure ("Content of Briefs")

- (f) Substitute Victim Identifier. Appellate briefs must use a victim identifier in place of the victim's name in any case in which the defendant was charged with an offense listed in [A.R.S. §§ 13-1401 et seq., 13-3201 et seq., 13-3501 et seq., or 13-3551 et seq.](#), or in any case in which the victim was a juvenile at the time of the offense. For purposes of this rule, "victim identifier" means a victim's initials, a pseudonym, or other substitute for the victim's actual name.



APPEALS & VICTIM PRIVACY

We generally use pseudonyms instead of initials because it makes the briefs more readable.

STATE v. BERNAL
Decision of the Court

MEMORANDUM DECISION

Presiding Judge Espinosa authored the decision of the Court, in which Judge Eckerstrom and Judge Brearcliffe concurred.

ESPINOSA, Presiding Judge:

¶1 Sergio Bernal appeals from his convictions and sentences for sexual abuse and sexual assault. He argues the trial court erred by asking the victim a juror's question and permitting the state's follow-up, denying his motion for judgment of acquittal, and denying his request for presentence psychological and psychosexual evaluations. We affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to upholding the jury's verdicts. *State v. Gunches*, 225 Ariz. 22, n.1 (2010). On December 15, 2018, Tina¹ crossed the border between Mexico and the United States with the help of paid smugglers, "coyotes," and was taken to a trailer in Nogales, Arizona. Tina was instructed not to leave the trailer and to answer only to a specific nickname. Around 2:00 a.m., Bernal entered the trailer, addressed Tina by the nickname, and grabbed her breasts. He then, and over the course of two days at the trailer, twice "force[d] [her] to perform oral sex on him," twice "raped" her by forcing "[h]is penis into [her] vagina," and "raped [her] on the back" by sticking "his penis in [her] anus."

¶3 After being transported in a vehicle that was detained at an immigration checkpoint, Tina was questioned about some visible bruising and reported the sexual assaults to a border patrol agent and then a Nogales Police Department detective. She had injuries to her right cheek, both breasts, "acute tenderness and pain to palpations to the anus" and vulva, "consistent with blunt-force trauma." Bernal's DNA was found on Tina's right breast and underwear, but DNA testing was inconclusive as to vaginal and anal swabs.

¹In this decision, we use the same pseudonym as the state has in its answering brief. See Ariz. R. Crim. P. 31.10(f) (requiring substitute victim identifier when defendant charged with certain offenses).



Recent Arizona Supreme Court opinion interpreting abatement statute, A.R.S. § 13-106

State v. Reed, 248 Ariz. 72 (2020)

- Separation of powers opinion
- Legislature lacked authority to require appellate court to dismiss a pending appeal on convicted defendant's death - A.R.S. § 13-106(A)
- Legislature had authority to prohibit abatement of conviction and sentence - A.R.S. § 13-106(B)
- “Whether a conviction, sentence, restitution order, or fine should stand or abate when a convicted defendant dies pending appeal is a policy matter affecting competing interests and rights held by victims, the state, the defendant's family, and society.”



APPEALS ADVOCACY AND THE AGOVS

Procedures

- Opens a case on victim's request
- Initial contact
- Notice of appeal
- Notice of briefs
- Notice of outcome

Time frame

- 6 months —————> 30 years



TRAUMA INFORMED APPROACH TO APPEALS ADVOCACY

Personal advocacy information Crisis response/intervention
Safety & security resources accessibility
Justice system advocacy Financial assistance
Victims' rights confidentiality support empowerment

The Four Rs of Trauma-Informed Care

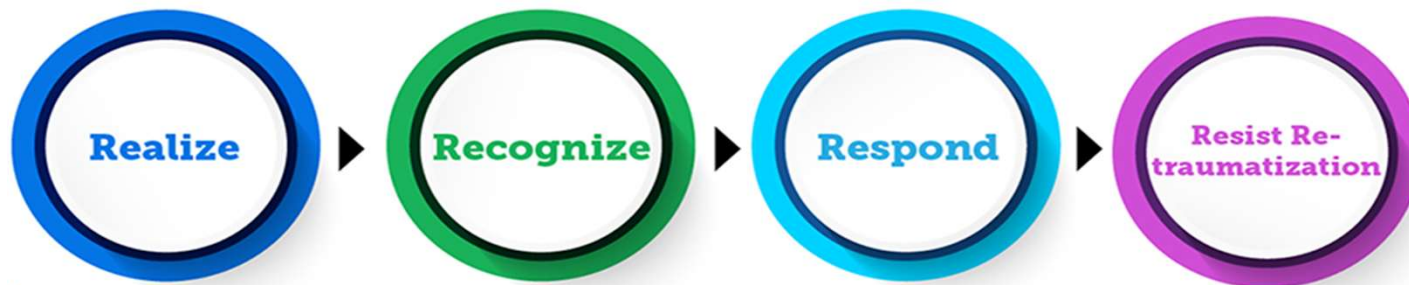


Image adapted from Substance Abuse and Mental Health Administration (SAMHSA), 2014

POST-CONVICTION ADVOCACY

CONTACT

- methods
- relationships
- frequency

PERSONAL

- restitution
- property return
- victim compensation

IN-PERSON ADVOCACY

- meetings
- oral arguments
- evidentiary hearings

EMPATHETIC LISTENING

- confusion
- fear
- anger



CASE EXAMPLE

State v. Arias

Murder - meeting with deceased victim's family prior to appellate oral argument. Included the appellate attorney, OVS advocates, and answered questions about the claims on appeal, likelihood of success, etc.



CASE EXAMPLE

State v. Louie T. Machado

Offense: October 2000 of a 16-year old girl

Sentenced: May 2008 (overturned)

March 2013 - 18 years (2,335 days' credit)

OVS involvement: since 2008



CASE EXAMPLE

State v. Watson

Triple homicide - deceased victim's cousin questioned why Arizona Supreme Court remanded the case in light of another decision.

Unfortunately, a news article had suggested that the defendant's appeal was successful and that the court of appeals would reopen the case.



CASE EXAMPLE

State v. Derek D. Chappell

Offense: murder of a toddler in March 2004

Sentenced: death sentence in 2007

OVS involvement: since 2008



CAPITAL APPEALS ADVOCACY AND THE AGOVS

Long-lasting working relationships

Cultural implications

Generational

Appeals are cyclical and circular in nature

Slow, slow, slow... until they're not

Collaborative

Executions



TAKING IT HOME



QUESTIONS?



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